

## CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Sep 25, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Rights-of-way for Mediacom

Exact Wording for the Agenda:

Resolution concerning 5-year extension of Rights-of-Way Use Agreement (Ordinance No. 09-665, Sub. A) with Mediacom Southeast LLC.

**Note: If amendment, Please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: \_\_\_\_\_

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO. 14-\_\_\_\_\_

WHEREAS, on or about August 13, 2009, the City of Huntsville, Alabama ("City") adopted Ordinance No. 09-665, Sub. A, entitled "Rights-of-Way Use Agreement", granting to Mediacom Southeast LLC ("Mediacom") the right to use and occupy the City's rights-of-way for the purpose of fiber connection ("Agreement"); and

WHEREAS, Mediacom accepted the Agreement on October 15, 2009, which, pursuant to section 4.1, is the "Commencement Date"; and

WHEREAS, the "Initial Term" of the Agreement is for five (5) years, expiring on October 14, 2014; and

WHEREAS, section 4.2 of the Agreement gives Mediacom the option to extend the term of this Agreement for an additional term of five (5) years, subject to the City's determination that Mediacom has complied substantially with all material terms and conditions of the Agreement, by providing written notice of such extension to the City not more than eighteen (18) months nor less than twelve (12) months prior to the expiration of the Initial Term; and

WHEREAS, section 4.2 of the Agreement provides that, in the event Mediacom fails to provide the City with a timely notice, the Agreement shall expire at the end of the Initial Term unless the City expressly waives such non-compliance; and

WHEREAS, in a written notice to the City, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, Mediacom represents that it has substantially complied with all material terms and conditions of the Agreement and desires to extend the term of the Agreement for an additional five (5) years until October 14, 2019; and

WHEREAS, Mediacom acknowledges that it missed the notice period, and has requested a waiver for such non-compliance; and

WHEREAS, the City Council of the City of Huntsville, Alabama, desires to waive the failure to provide timely notice of the extension and to approve the extension of the Agreement for an additional five-year term.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama, that, based on the foregoing premises which are specifically incorporated herein and made a part hereof, the City of Huntsville, Alabama, hereby reserves all rights it has under the Agreement, expressly waives Mediacom's failure to provide timely notice of the extension, and approves an extension of the Agreement for an additional five-year term to end on October 14,

2019, unless further extended in accordance with the terms of the Agreement.

ADOPTED this the \_\_\_\_ day of \_\_\_\_\_, 2014.

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President of the City Council  
of the City of Huntsville,  
Alabama

APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2014.

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Mayor of the City of  
Huntsville, Alabama

Exhibit A



**Bruce Gluckman**  
**Deputy General Counsel**

May 27, 2014

Ms. Claudia Anderson  
Assistant City Attorney  
City of Huntsville  
P.O. Box 308  
Huntsville, AL 35804

**VIA CERTIFIED MAIL**

**RE: Ordinance 09-665, Sub. A, Rights-of-Way Use Agreement**

Dear Ms. Anderson:

On August 13, 2009, the City of Huntsville (the "City") adopted Ordinance 09-665, Sub. A, granting Mediacom Southeast LLC ("Mediacom") the right to use and occupy the City's Rights-of-Way for the purpose of fiber connection (the "Agreement"). Mediacom accepted the Agreement on October 15, 2009, which pursuant to Section 4.1, is the Commencement Date.

The Initial Term of the Agreement is for five (5) years, expiring on October 14, 2014. Section 4.2 of the Agreement gives Mediacom the option to extend the term for an additional five (5) years, subject to the City's determination that Mediacom has complied substantially with all material terms and conditions of the Agreement. In order to exercise such right, Mediacom shall provide written notice of such extension to the City not more than eighteen (18) months and not less than twelve (12) months before the expiration of the Initial Term. Therefore, Mediacom should have provided notice between April 14, 2013 and October 14, 2013 (the "Notice Period") to extend the term. Mediacom acknowledges that it has missed the Notice Period.

Mediacom has substantially complied with all material terms and conditions of the Agreement and now desires to extend the term of the Agreement. Mediacom hereby requests the City to waive non-compliance with the notice requirements of Section 4.2 and extend the Agreement for an additional five (5) years, until October 14, 2019.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce Gluckman", with a stylized flourish at the end.

cc: Lee Beck, Sr. Manager, Area Operations  
Don Hagwell, Group VP Operations

**Mediacom Communications Corporation**  
**One Mediacom Way • Mediacom Park, NY 10918 • 845-443-2650 • Fax 845-698-4570**